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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.          | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------------|------------------|
| 10/782,472   | 02/18/2004  | Jonathan Dale        | 073338.0135 (02-53312<br>FLA | 4871             |
| 5073   | 7590        | 04/16/2009           | EXAMINER                     |                  |
| BAKER BOTTS L.L.P.<br>2001 ROSS AVENUE<br>SUITE 600<br>DALLAS, TX 75201-2980 |             |                      | McCORMICK, GABRIELLE A       |                  |
|  |             |                      | ART UNIT                     | PAPER NUMBER     |
|  |             |                      | 3629                         |                  |
|  |             |                      | NOTIFICATION DATE            | DELIVERY MODE    |
|  |             |                      | 04/16/2009                   | ELECTRONIC       |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/782,472

**Applicant(s)**

DALE, JONATHAN

**Examiner**

Gabrielle McCormick

**Art Unit**

3629

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-25.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/JOHN G WEISS/  
Supervisory Patent Examiner, Art Unit 3629

/G. M./  
Examiner, Art Unit 3629

Continuation of 11, does NOT place the application in condition for allowance because:

Applicant's arguments with regard to 35 USC 112 rejections are not persuasive. The Examiner maintains that the specification does not provide any further detail as to how a service provide is deemed "satisfactory" or how ranking is accomplished. The disclosures of preferences and constraints appear to indicate that some factors may be weighed positively and others negatively in determining satisfaction and ranking, however, the specification does not provide the algorithms that would be used in such a case. Further, as preferences and constraints are assessed differently by different people or organizations, a plethora of choices exists that could comprise criteria for judging a supplier. Applicant's claims are directed to broad concepts defined by examples and generalities, with an infinite variety of possible evaluations of satisfaction and rankings to be assigned in an infinite variety of ways and used in an infinite variety of calculations. Applicant has not defined any means to determine a provider as "satisfactory" or to rank those that are satisfactory. Thus, the Examiner asserts that specification does not provide sufficient guidance and direction to one skilled in the art to make and use applicant's invention without undue experimentation. The Examiner disagrees that Applicant's citations from page 10 are sufficient to provide enablement. With regard to the "organizational agent", the Examiner maintains that the specification does not provide how the agent establishes the database. The Examiner understands that the database maintains information, however, Applicant's invention is directed to automated management, therefore that specification does not adequately provide enablement for the establishment of the database by the agent.

With regard to the rejection under 112, second paragraph, the Examiner maintains that it is unclear whether the organizational agent is operable to provide the communication, access, determination and ranking steps associated with the service providers. The system components or structure is not claimed such that one understands the structure required to carry out these steps. The operation of the organization agent is defined by method type steps rather than by structure. As a result, the claim purports to be both a system and a process and is therefore ambiguous. Applicant's citations and arguments provided are not sufficient to overcome the lack of structure or system components in the claim necessary to demonstrate how the organization agent is operable to perform the steps of communication, access, determination and ranking associated with the service providers.

With regard to rejection under 35 USC 101, the Examiner is not persuaded by Applicant's arguments. No transformation of underlying subject matter occurs. The Applicant argues that claim 1 recites the use of a template and points to the specification. The limits of the specification are not read into the claims. Further, the use of a template would not suffice to establish transformation under 35 USC 101. The Examiner further maintains that the claim language of claim 9, in light of the specification, may be understood to comprise human beings as service providers, therefore the rejection is maintained.

With regard to the 35 USC 103 arguments corresponding to the amended claims, the Examiner is not persuaded by Applicant's arguments. The "feature interfaces for interacting with service providers" are inherently comprised in the networked data processing system (P[0025-0026]) that result in the determination of descriptors (P[0059]), the negotiation (P[0061]) and the authorization to perform the service (P[0073]). Das discloses both service descriptors such as pricing and availability (P[0050]). Further, the Examiner has not claimed that the descriptors are an inherent part of negotiation because it is not necessary to do so. Das discloses that descriptors such as price, quantity, delivery times and quality measures are used to negotiate the purchase from sellers, therefore, negotiation involves determining descriptors provided by the provider. With regard to negotiation, Das discloses negotiation (P[0061]). Vashistha discloses ranking.